



TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

Presented before
The New York City Council Committee on Immigration
and the Committee on Youth Services
Oversight Hearing on
LGBTQ Immigrant Youth in New York City
and
Int. 480-2018

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My name is Laura Berger. I am a staff attorney in the Immigration Unit at Defender Services (BDS). BDS is a full-service public defender office in Brooklyn, representing nearly 35,000 low-income New Yorkers each year who are arrested, charged with abuse or neglect of their children, or facing deportation. I thank the New York City Council Committee on Immigration and the Committee on Youth Services for the opportunity to testify about LGBTQ Immigrant Youth in New York City and Int. 480-2018.

Since 2009, the BDS Immigration Unit has counseled, advised, or represented more than 10,000 immigrant clients. Our Immigrant Youth and Communities Team has represented thousands of Brooklyn residents in their applications for lawful immigration status and in non-detained removal proceedings. Highlights of our work include representing young people in their pursuit of Special Immigrant Juvenile Status (SIJS) or Deferred Action for Childhood Arrivals (DACA). Since 2013, we have screened and represented 220 SIJS eligible young people. We specialize in the most complex cases, representing young people who reside in Brooklyn and have significant criminal court involvement or whose parents have ACS involvement.

Background

An estimated 3,800 young people in New York City experience homelessness each day.¹ Youth who identify as lesbian, gay, bisexual, transgender, or queer (LGBTQ) and Black and Latinx youth are disproportionately impacted by homelessness. While LGBTQ youth are estimated to make up only 5-7% of the population, they make up approximately 40% of the City's homeless youth population.² Similarly, nearly 90 percent of NYC shelter residents are Black or Latinx.³ One fifth of New Yorkers are immigrants, 30,000 are DACA-holders, and many are undocumented and unaware of their immigration status.⁴

In spite of the important protections for immigrants passed by the Council, immigrant youth without citizenship in New York City, particularly immigrant youth of color, homeless, and LGBTQ immigrant youth, are at constant risk of ICE detection. Instead of providing shelter and services for youth, the City too often relies on the criminal legal system to handle this population's complex needs. Homeless youth are at great risk since so many activities that are unavoidable are criminalized, such as being in a park after closing, sleeping on the subway, or public urination. Nationally, 39% of homeless LGBTQ youth have had involvement with the juvenile justice system.⁵ Youth in the juvenile justice system disproportionately identify as LGBT (13-15 percent), with 40% of incarcerated girls identifying as LGBT.

For undocumented youth, these arrests also put them on ICE's radar. A summons or misdemeanor arrest may put a youth at risk of deportation, sometimes accompanied by months or years of detention, while their immigration case is pending. An arrest or conviction for a crime of survival may compromise eligibility for SIJS or other immigration relief.

Runaway and Homeless Youth Services

Last year, BDS represented over 270 homeless clients under age 25. Each year public defenders in Brooklyn serve around 500 homeless 16- and 17-year-olds alone, a vast majority of whom are not being served by RHY providers because of the lack of services in Brooklyn. About half of the youth are made homeless by the criminal justice system when the court issues an order of protection against the youth for 90 days after a criminal allegation involving a domestic disturbance, making it illegal for the young person to return home.⁶ The other half disclose to

¹ Root Cause, *New York State Report: Education and youth Development, Improving Outcomes for Homeless Youth*, September 2012, available online <http://www.rootcause.org/docs/Resources/Research/Improving-Outcomes-for-Homeless-Youth/Improving%20Outcomes%20for%20Homeless%20Youth-%20New%20York.pdf>

² Nico Sifra Quintana, Josh Rosenthal & Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, June 2010, available at <https://www.americanprogress.org/issues/lgbt/reports/2010/06/21/7983/on-the-streets/>

³ Coalition for the Homeless, *New York City Homelessness: The Basic Facts*, September 2018, available online at <http://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>

⁴ Migration Policy institute, *Deferred Action for Childhood Arrivals (DACA) Data Tools: DACA-Eligible Populations by State and County*, 2016, available at <http://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>.

⁵ The Equity Project, *LGBT Youth & Juvenile Justice*, 2014. Available at <http://www.equityproject.org/wp-content/uploads/2014/12/ACT4JJ-LGBT-Fact-Sheet-November-2014.pdf>

⁶ As a matter of practice in Brooklyn, prosecutors regularly ask for and judges regularly issue a full order of protection in cases involving "domestic violence," even though these are normal disputes between teenagers and their parents. Full Orders of Protection, in effect, usually render our young clients homeless. In contrast, in New Jersey, when EMT's respond to a domestic disturbance involving a youth, they take the youth to the Emergency

their defense team that they are living with friends or significant others because of a breakdown of the relationship with their parents.

RHY shelters are permitted by the New York State Office of Children and Family Services (OCFS) and run with the New York City Department of Youth and Community Development (DYCD). Young people who access RHY services are eligible for 2 types of shelter: crisis shelter for 60-120 days and transitional independent living (TIL) shelter for up to 24 months. Additionally, drop in centers are available in each borough where youth can access services such as case management, legal assistance, and mental health and medical care.

RHY providers report that they serve over 1,000 youth from Brooklyn per year (at facilities almost exclusively located in Manhattan). We estimate that Kings County would need at least 300 crisis shelter beds to ensure that no Brooklyn youth was forced to sleep on the street, sleep on the train, couch surf, or trade sex for shelter.⁷ Currently, there are only 28 beds for youth in Brooklyn and no beds for youth who do not identify as LGBTQ.

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status is a path to Green Card status available to many young people living in the US. Youth must meet five criteria to qualify, (1) be under the age of 21; (2) be living in the United States; (3) be unmarried; (4) have a valid juvenile court order which finds that the child is a dependent of the court or state or that the child has experienced abuse, abandonment, or neglect; and (5) it is not in the child's best interest to return to their country of origin.

Once a young person is connected to an immigration attorney, they must work together to prepare their case and find a sponsor guardian who can sponsor the young person. Then, the case is filed in Family Court for guardianship. In my experience, this court proceeding can take as little as 3 months but in some courts takes up to a year. After establishing guardianship, an immigration case for SIJS must be filed. This process takes about one and a half years for youth from countries with smaller numbers of immigrants, but for youth from Mexico, El Salvador, Guatemala, and Honduras the process can take up to 4 years. From the time a young person first walks into my office to the time they receive their green card based on SIJS status, over 5 years may have passed.

Recommendations

Provide more safe shelter space and respite centers for RHY youth in Brooklyn

The vast majority of runaway and homeless youth must seek crisis shelter beds in Manhattan where they are too often turned away for lack of beds. Runaway and homeless youth have been made homeless by failures of the education system, juvenile and adult criminal legal systems, the family court and foster care systems, and adults who have failed to properly care for them. The

Room rather than arresting them. If NYC were to adopt this approach 250 youth in Brooklyn every year would avoid court-mandated homelessness.

⁷ *Testimony of Amy Albert, Presented before the New York City Council Committee on Juvenile Justice and the Committee on Justice System Oversight hearing on NYC's Preparedness to Raise the Age, April 18, 2018.*

City can and must address the youth homelessness crisis by opening youth crisis shelters in Brooklyn, the Bronx, Staten Island, and Queens.

Provide reimbursement for capital investments to RHY service providers to allow them to open crisis shelters in the outer boroughs

We have been told that RFY providers are unable to open new crisis shelters in boroughs like Brooklyn because the City currently does not fund capital investments.⁸ The City should assist RHY providers to locate and secure bed space in Brooklyn as landlords are often reluctant to lease to shelter providers. Even better, the City could renovate existing City buildings such as old hospitals or schools for this purpose and then issue RFP contracts for use of these spaces. The availability of high-quality services is critical to the ability of New York's homeless youth to break the cycle of homelessness and court involvement.

End Broken Windows Policing

The legacy of broken windows policing is that low-income people of color in certain New York City neighborhoods are disproportionately targeted by police for arrest for conduct that would not result in any police interventions for others. For homeless and LGBTQ youth, interactions with police are commonplace. Arrests for low-level offenses may flag young people for deportation, and convictions can preclude immigrant youth from immigration relief or make those with lawful status deportable.

Limit information sharing between city agencies and ICE

Young people applying for Special Immigrant Juvenile Status must have a family member or other close adult appear in Family Court to be granted guardianship or custody over the young person. Some Family Court judges and referees require that the proposed guardians and all other adults in the household be fingerprinted as a pre-requisite to being granted guardianship. Others will waive this requirement when good cause is shown. There is no statutory fingerprinting requirement for guardians of the person pursuant to Family Court Act § 661(a) and SCPA 1704(8). These fingerprint checks can result in ICE enforcement against the young person's family members. We encourage all New York City judges and referees to reconsider making these fingerprint checks mandatory in all guardianship cases.

Introduction 480-2018

Intr. 480-2018 would amend the administrative code of the City of New York to require DYCD to create and implement a plan requiring RHY service providers to identify youth who may qualify for SIJS or other immigration relief, assist these youth in obtaining legal services, and track youth until the completion of their immigration cases.

We support the effort to ensure that all eligible young people obtain these essential services, but we believe that this bill is the wrong approach and we respectfully request an opportunity to engage with Council staff, service providers and other stakeholders to determine the best way forward.

⁸ Please see our previous testimonies before the City Council, available on the Brooklyn Defender Services website at www.bds.org/#policy.

Systems to track SIJS eligible RHY through their immigration process may compromise youth confidentiality and, due to the length of immigration cases, may be impractical. If enacted, great caution must be used to respect client confidentiality while information is shared between RHY service providers, DYCD, and the Council.

Additionally, monitoring and reporting on case outcomes will be difficult, as 5 years may pass before a youth receives permanent residence through SIJS. RHY may stay in transitional independent living programs for up to 24 months, but average young person stays in a crisis shelter for only 21-60 days.

Conclusion

We applaud the City Council for your commitment to run away and homeless youth and immigrant communities in New York City, and believe more must be done to identifying youth who may qualify for SIJS status. Due to lack of beds, many young people are turned away when seeking housing and may never receive a screening. These youth will continue to fall through the cracks. In order to prevent this, there should be free, voluntary, and confidential Know Your Rights trainings and immigration clinics set up for youth and their families in their communities, schools and in hospitals. These programs can help to identify young people who need help and connect them with legal services.

We encourage the City Council to further invest in housing for young people and continue to support agencies like ours that provide free immigration services to New Yorkers. Thank you for your time and consideration of this important issue.